IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GALLEON S.A. BACARDI-MARTINI U.S.A., INC. and BACARDI & COMPANY LIMITED, *Petitioners*, -against- HAVANA CLUB HOLDING, S.A. and EMPRESA CUBANA EXPORTADOR DE ALIMENTOS Y PRODUCTOS VARIOS, S.A., d.b.a. CUBAEXPORT, *Respondents*	Cancellation No. 24,108

MOTION OF RESPONDENT HAVANA CLUB HOLDING FOR RECONSIDERATION OF THE BOARD'S DECISION DATED JANUARY 21, 2003

Respondent Havana Club Holding, S.A. ("Respondent"), through its undersigned counsel, hereby moves the Board to reconsider its decision of January 21, 2003 (the "Decision"). The Board's Decision denied Respondent's Motion Pursuant to the Government in the Sunshine Act, 5 U.S.C. § 557(d)(1) (the "Motion"), in its entirety. The Motion sought an order (i) requiring Petitioners to show cause why their claims should not be dismissed due to improper *ex parte* contacts concerning an adjudicatory proceeding, (ii) requiring full disclosure by Petitioners, those acting on its behalf, and USPTO Director James E. Rogan and Deputy Director Jon Dudas and their associates of the extent, nature, and consequences of all *ex parte* communications related to this proceeding, and (iii) suspending this proceeding pending resolution of the foregoing.

Based on the facts before it and the prevailing authorities, the Board should have granted the Motion in its entirety. The Government in the Sunshine Act and case law enforcing it

required the Board to direct Bacardi, its agents, and those to whom it communicated to disclose all the additional communications that had clearly taken place, and to suspend this proceeding until that disclosure occurred and could be properly evaluated to assess whether this proceeding can fairly proceed.

After the Motion was fully submitted, Respondent learned of additional documents, subsequently obtained by third parties under the federal Freedom of Information Act and its Florida counterpart – including what are evidently some (*but not all*) of the additional communications whose existence (but not contents) were revealed by the prior record. Those documents, not previously available to Respondent, provide extraordinary additional confirmation and amplification of what the record already available (which the Board either misread or insufficiently considered) made plain: Bacardi has made, and caused others to make on its behalf, numerous *ex parte* communications to obtain a favorable result on the merits in this adjudicatory proceeding, including e-mails, oral conversations and secret meetings. Moreover, the circumstances surrounding these communications – including the politically well-connected agents Bacardi persuaded to make the communications and the confident predictions by Deputy Director Dudas about its imminent success as a result of the communications made – raise grave doubt about whether Respondent can obtain, or can reasonably be assured of obtaining, a fair, impartial adjudication.

Respondent is entitled to full disclosure of the whole trail of improper communications, considering *all* the *ex parte* communications and an inquiry into what happened as a result, and then to such relief as is appropriate. The Board should reconsider the Decision and reach a result consistent with law and precedent.

RELEVANT BACKGROUND

On June 13, 2002, Governor Jeb Bush wrote a letter to Director James E. Rogan of the United States Patent and Trademark Office explicitly requesting that the Board find in favor of Bacardi. In that letter, expressly written "on behalf" of Bacardi, Governor Bush asked the PTO to take "quick, decisive action" to grant Bacardi the relief it was seeking, "cancellation" of the U.S. registration for the HAVANA CLUB mark. *See* Declaration of Respondent's Counsel Gregg Reed dated September 9, 2002 in support of the Motion ("Reed Decl."), Ex. D.

Director Rogan answered this letter on July 3. He assured the Governor that the PTO would take one of the actions Bacardi was seeking – expedition – assuring him that the PTO would "act expeditiously when the proceeding reache[d] the stage where the TTAB ha[d] statutory and regulatory authority to render a final decision." *Id.* Governor Bush replied on July 16, thanking Director Rogan for his "attention to this matter," *as well as for the "continued assistance of [Deputy Director] Jon Dudas."* *Id.*, Ex. F (emphasis added).

As set out in Respondent's Motion, Bacardi's communications with the Director violated the Government in the Sunshine Act, 5 U.S.C. § 557(d)(1)(A).[1] That provision prohibits interested persons outside of an agency from making, or knowingly causing to be made, "to any

[1] We need not address the suggestion that the Government in the Sunshine Act does not apply to this proceeding, since the Board made no such holding and decided the Motion on its merits. However, we do note that neither of the two cases cited by the Board as suggestive that the Act might not apply – *In re Gartside*, 203 F.3d 1305 (Fed. Cir. 2000), and *In re Zurko*, 142 F.3d 1447 (Fed. Cir. 1998), *rev'd sub nom. Dickenson v. Zurko*, 527 U.S. 150 (1999) – involved the *ex parte* contact provisions of the Government in the Sunshine Act. Moreover, the Government in the Sunshine Act was aimed squarely at securing fairness and due process in adjudicated proceedings which are to be decided according to law by administrative law judges, and applies to such proceedings.

In any event, even if the Act were not applicable, *ex parte* communications on the merits of an adjudicatory proceeding, to be decided by administrative law judges according to law, are improper, and a proceeding infected with such communications would be improper and fundamentally unfair. The trappings of fairness and the rule of law are not to be used as a charade for proceedings decided by political pressure applied through *ex parte* communications. Even if the Act did not apply, due process and basic norms of administrative law would effectively require the same result here.

member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an *ex parte* communication relevant to the merits of the proceeding." *Id.* Since Bacardi was seeking cancellation, the request for cancellation was assuredly on "the merits."

By the same token, the PTO's failure to disclose the communications constituted a separate violation of 5 U.S.C. § 557(d)(1)(C), and cast serious doubts on Respondent's ability to obtain a fair and impartial hearing on the merits of this proceeding. Pursuant to 5 U.S.C. §§ 556(d) and 557 (d)(1)(D), the Board should have ordered Bacardi to show cause why its claims should not be dismissed.

Further, Governor Bush's thanks to Director Rogan for "the continued assistance of [Deputy Director] Dudas" made plain that there had been numerous further contacts between the Governor's office (on Bacardi's behalf) and the PTO, whose disclosure is essential. The Board erred in not requiring disclosure and inquiry into the specifics of that "continued assistance." What we thought was evident from documents available when the Motion was submitted, and the "continued assistance" reference in them, has now been fleshed out by documents obtained by others under freedom of information laws and provided to Respondent's counsel after submission of the Motion. Among the documents now in hand are:

- e-mails reflecting at least two secret meetings between Deputy Director Dudas and agents for Bacardi, at one of which the merits were evidently discussed;
- *ex parte* communications from the Deputy Director confidently predicting Bacardi's success;
- *ex parte* e-mails reflecting Bacardi's effort to have the Commerce Department intervene with the PTO to have political appointees overrule career PTO staff because it feared the career staff would be relying on the law and the facts so as to lead to a TTAB resolution that would be unfavorable to Bacardi; and

- *ex parte* e-mails reflecting Bacardi's assessment (based on ex *parte* communications) that various PTO employees were somehow not as helpful to it as Bacardi had hoped, and its efforts to get such persons removed from consideration of Bacardi's various demands.

ARGUMENT

POINT I

BASED ON THE EVIDENCE BEFORE IT, THE BOARD SHOULD HAVE AT LEAST ORDERED FULL DISCLOSURE OF ALL *EX PARTE* COMMUNICATIONS

The Board found that the *ex parte* communications between the Governor and the Director Rogan were mere status inquiries, and were not relevant to the merits of the proceeding. Decision at 14. That finding was erroneous, and was based on a misconstruction of the applicable law. The lone case cited by the Board does not support the proposition that the *ex parte* communications here were mere status inquiries, and regardless, that case stands for the rule that even *status* inquiries can rise to the level of impropriety based on circumstances. In any event, the history of that case and others like it make plain that the Board erred in not ordering full disclosure by Bacardi of all the *ex parte* communications that evidently occurred here, as Respondent requested.

A. The Showing In This Proceeding Was More Compelling Than In Every Reported Case Where Disclosure Was Required

In denying the Motion, the Board relied on *Professional Air Traffic Controllers Organization v. Federal Labor Relations Authority*, 685 F.2d 547 (D.C. Cir. 1982) ("*PATCO*"), in which the court found that certain communications did not taint a proceeding to a degree compelling reversal of the Federal Labor Relations Authority's decision of the case.[2] However, that reliance ignored the D.C. Circuit's earlier decision in that case, *Professional Air Traffic*

[2] In fact, and not without certain irony, the Board cited to 672 F.2d 109 (D.C. Cir. 1982). However, it is clear from the Board's discussion of the case that it was actually referring to the later decision, 685 F.2d 547 (D.C. Cir. 1982); the holding of the earlier decision was ignored.

Controllers Organization v. Federal Labor Relations Authority, 672 F.2d 109 (D.C. Cir. 1982). While the later decision addressed what relief the plaintiff was entitled to on consideration of all the surrounding facts and circumstances, it is the earlier decision – addressing the agency's obligation to disclose all those facts and circumstances – which is pertinent here.

In that earlier decision, a declaration lodged with the court indicated that the FBI had investigated allegations that a member of the FLRA had been the subject of an attempt to influence the proceedings in that case. The investigation had concluded with the finding that no wrongdoing had taken place. Because of the mere suggestion of impropriety, however, the D.C. Circuit court ordered, *sua sponte*, an evidentiary hearing conducted by a specially appointed administrative law judge from outside the FLRA, in order to fully and completely bring all *ex parte* communications to light. *See PATCO v. FLRA*, 672 F.2d at 257-58. The court stated that it "regard[ed] the portents of improper communications with an administrative decisionmaker as grave," and that "the suggestion of behind-the-scenes machinations is intolerable." *Id.* at 260.

Reported cases involving *ex parte* contacts all agree that, faced with evidence of improper communications, an adjudicatory body *must* order disclosure of all such communications, and (depending on the circumstances) conduct a hearing to determine their nature and extent. *See, e.g., Portland Audubon Soc'y v. Endangered Species Comm.*, 984 F.2d 1534, 1543, 1549-50 (9th Cir. 1993) (recognizing that "[e]x parte contacts are antithetical to the very concept of an administrative court reaching impartial decisions through formal adjudication," and remanding for "'vigorous and thorough' adversarial, evidentiary hearing... to determine the nature, content, extent, source, and effect of any *ex parte* communications" between the Committee and the President); *North Carolina Envtl. Policy Inst. v. EPA*, 881 F.2d 1250, 1258 (4th Cir. 1989) (explaining that "[a]n ALJ conducting an on-the-record hearing... *is obliged to explore the*

possibility of and protect against taint of the proceeding by ex parte communications when such a possibility is plausibly suggested by a party" (emphasis added)); *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 58 (D.C. Cir. 1977) (remanding to agency for evidentiary hearing with specially appointed examiner "to determine the nature and source of all *ex parte* pleas and other approaches that were made to the [FCC] or its employees" during rulemaking process (citation omitted)).

The Board's decision here ignored that duty, and – skipping over the first step required by the Government in the Sunshine Act, obtaining the full record – rushed to the second step, evaluation of what remedy is required, when the factual basis to assess what had happened had not yet been compiled. Doing so was plain error.

It is important to note, moreover, that Respondent has made a much stronger showing of *ex parte* contacts than in those cases where disclosure was ordered. The record before the Board consisted not merely of news articles reporting on *ex parte* contacts (as in *Portland Audubon, supra*), or third-party declarations professing *suspicions* of *ex parte* contacts (as in *PATCO*). Here, Respondent produced actual *ex parte* communications, urging the Director (a statutory member of the PTO) to grant Bacardi the ultimate relief it was seeking, and to do expeditiously. The holdings that disclosure was mandatory in the cases cited *supra* require *a fortiori* that it be directed here.

B. The Communications Already Presented To The Board Were Clearly Relevant To The Merits Of This Proceeding, And Cannot Be Dismissed As Mere Status Inquiries

In denying Respondent's Motion, the Board found that the communications submitted therewith were not relevant to the merits of the proceeding, but were instead procedural in nature, and were rightly treated by the Director as such. This finding too was erroneous.

Citing *PATCO*, the Board found that Governor Bush's letters were mere status inquiries, and were therefore not improper. *See* Decision at 15. However, the communications in *PATCO* were of a different sort altogether than those here. Further, the *PATCO* court characterized as "improper" and "plainly inappropriate" other *ex parte* contacts which were much more similar to those in the instant proceeding. *PATCO* , 685 F.2d at 571.

In *PATCO*, the court examined numerous *ex parte* contacts with the FLRA documented by the evidentiary proceeding it had ordered. As the Board correctly stated, one of those contacts involved telephone calls made by the Secretary of Labor to two members of the FLRA. The Secretary stated in the calls that "the Department of Transportation would appreciate expeditious handling of the case," and shared "his concern that the case not be delayed." *Id.* at 558. In analyzing the Secretary's calls, the court indeed noted that the calls "did not in fact discuss the merits of the case." *Id.* at 568.

Unlike *PATCO,* however, where the Secretary of Labor limited his statements to procedural matters, expressing only concern that the case go forward without delay and without referring to the actual outcome, Bacardi's agent expressly requested that this proceeding be decided in Bacardi's favor. A request that the relief one party seeks be granted cannot be construed as a mere procedural inquiry, regardless of the recipient's portrayal of the request, and is plainly relevant to the merits. *See Portland Audubon Soc'y*, 984 F.2d at 1546 n.25 (where the very purpose of communications was to persuade Committee members to vote in favor of one side, "such communications clearly would be relevant to the merits of the proceedings and would violate the APA"); *see also PATCO*, 685 F.2d at 563 (noting that the phrase "relevant to the merits" should be broadly construed and includes more than simply communications about facts in issue) (citing S. Rep. No. 354, 94th Cong., 1st Sess. 11, 36 (1975)). Governor Bush's letter,

telling the Director that the respondent's registration "should be cancelled immediately," cannot be dismissed as a mere status inquiry. While the Governor also requested that the PTO act quickly, the quick action he sought was a decision in Petitioners' favor. The text and its overall tone preclude dismissal of the letter as a mere status inquiry.

A further reason why it was error to dismiss the motion by pasting a "status inquiry" label on Governor Bush's June 13 letter "on behalf of Florida-based Bacardi-Martini, USA, Inc." (Reed Decl. Ex. D) (beyond the fact that the letter itself nowhere inquires about the status of the matter) is that Bacardi and its counsel knew the status full well; they did not need Governor Bush to help them with that procedural detail. And in the unlikely event that Bacardi wanted more clarity on the status of the proceeding, it would have been a simple matter to get Respondent's counsel on the telephone and call the PTO or TTAB staff counsel.[3]

The *PATCO* decision did address another *ex parte* contact that was much more similar to the type at issue in this proceeding. After discussing the phone calls cited by the Board in its decision, the court went on to examine a dinner conversation between a prominent labor figure and a member of the FLRA. In that conversation, the labor leader expressed his views as to what type of punishment should be meted out to a union that participates in an illegal strike (the issue in that proceeding), without even directly referring to the pending proceeding. The court nonetheless found this communication clearly improper, as it was a blatant attempt to influence the member's decision. *See PATCO*, 685 F.2d at 570.

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[3] In fact, as subsequently obtained documents show, *see* Point II *infra*, the Governor's office was in frequent contact with Bacardi for months before sending the letter, and was very well informed by them as to the status of the proceeding. As early as January 2002, Bacardi's chief in-house lobbyist had asked Governor Bush for help in connection with its efforts in this proceeding to cancel the HAVANA CLUB trademark registration, and Governor Bush had responded the next day, "Jorge, I will see what I can do." *See* Sims Decl. Ex. A, at FOIA 0029. Thereafter, the Governor's staff was in frequent contact with Bacardi. *See* the chronology attached as Exhibit B to the Sims Declaration, accompanying this motion.

Bacardi's communications are far more egregious than the communications held improper in *PATCO*. Bacardi engaged Governor Bush to personally ask the Board to grant the relief it seeks in this proceeding. If the labor leader's general comments in *PATCO* were improper communications on the merits, then Bacardi's direct request for cancellation is surely so. In the face of this bald attempt to influence the outcome of this adjudicated proceeding in secret, the Board should have granted Respondent's motion, and should do so now on reconsideration.

C. Even If The Communications Presented To The Board Were Status Inquiries, They Were Still Improper Under The Government In The Sunshine Act

Even while characterizing the particular telephone calls at issue as procedural inquiries, the court in *PATCO* indicated that they still might have been improper. *Id.* Citing the legislative history of the Government in the Sunshine Act, the court noted that "even a procedural inquiry may be a subtle effort to influence an agency decision . . . In doubtful cases the agency official should treat the communication as *ex parte* so as to protect the integrity of the decision making process." *Id.* at 563 (quoting S. Rep. No. 354, 94th Cong., 1st Sess. 11, 36 (1975)). The court refused to remand for a new proceeding, not because it found that the phone calls were proper, but rather because the court found that they had not tainted the proceeding, *which was already completed,* or prejudice PATCO to a degree requiring the reversal of the FLRA's decision. *See* 685 F.2d. at 568.

Judge Robinson, concurring, explained what made the phone calls improper. A request to speed up the adjudicatory process is, in effect, a communication relevant to the merits of the issue of the case's urgency. *See id.* at 597 (Robinson, J., concurring in part and concurring in the decision). In addition, inquiries made by a government officer, regardless of actual intent, could be perceived by the recipient and the general public as political pressure. *Id.* Aside from the

obvious effect these inquiries have on the actual decision of the adjudicator, they also erode public confidence in the entire process. *Id.*

Once again, the letters Bacardi instigated are more egregious than the communications found improper in *PATCO*. In *PATCO*, the Secretary of Transportation made arguably procedural inquiries into the status of that case. Here, expressly "on behalf" of a private party, Governor Bush requested a quick, favorable decision for Bacardi from the Director.

Under the circumstances, the recipient of such correspondence could not help but feel political pressure to see that the proceeding be decided in accordance with the obvious wishes of the sender. The Director is a statutory member of the TTAB, with power to select members of TTAB panels and substantial influence over their work and careers. Objectively assessed, the letter to him and the follow-up (expressing appreciation for Deputy Director Dudas's "continuing assistance") raise grave concerns about the impartiality of the decision-maker, and Respondent's ability to obtain a fair hearing, that none of the reasoning in the January 21 decision has allayed. Since the Governor's letter to Director Rogan was made at Bacardi's behest and "on [its] behalf," and since the Director's top deputy provided Bacardi with "continuing assistance," the Board should have granted Respondent's Motion, and should do so on reconsideration.

POINT II

EVIDENCE THAT HAS BECOME AVAILABLE SUBSEQUENT TO RESPONDENT'S MOTION PROVIDES ADDITIONAL CONFIRMATION THAT THE BOARD ERRED IN DENYING DISCLOSURE

The conclusion mandated by the record on the initial motion is powerfully reinforced by the documents obtained subsequent to the filing of the Motion – some 150 pages of letters, e-mails, and other communications obtained from freedom of information laws in Florida and the

federal FOIA. *See* Sims Decl. Ex. A.[4] These communications confirm what was already apparent from the slim – but startling – factual material available when the motion was filed: Bacardi set out to enlist Governor Bush to apply political pressure to obtain the cancellation it was seeking, and used that relationship to facilitate numerous *ex parte* communications by its own staff, and by the Governor and his staff. The result is a sorry (but so far incomplete) trail of *ex parte* communications by or for Bacardi – including phone calls, e-mails, and meetings – seeking to obtain a favorable result in a proceeding that was supposed to be decided according to law.

As a result of the documents obtained so far (which reflect only a small subset of the communications that are now evident), it is now apparent that Bacardi and Governor Bush's office communicated with each other and the PTO for months regarding this proceeding, and that Bacardi and members of the Governor's office actually met in person with officers of the PTO, including Deputy Director Dudas, outside of Respondent's presence and off the record of this proceeding. *See* Sims Decl. Ex. A, at FOIA 0044, 0132.

The recently acquired documents begin the process of filling out the picture of exactly what Deputy Director Dudas's "continued assistance" consisted of:

- Direct conversations between Mr. Dudas and Bacardi's agents relevant to the merits of the proceeding as early as February 1, 2002 (Sims Decl. Ex. A, at FOIA 0013);
- Calls by Mr. Dudas to the Governor's counsel later in February (*Id.* at FOIA 0041);

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[4] Some of the subsequently obtained documents would appear responsive to Respondent's original FOIA requests. The failure to have disclosed them suggests continued efforts at concealment of the *ex parte* communications in this matter. Such efforts are further suggested by Deputy Director Dudas's reply to a September 16, 2002 e-mail from a PTO attorney. Commenting on a proposed response to a congressional inquiry about a September 14 *Washington Post* story reporting on the *ex parte* communications in this proceeding, Dudas said: "Nicely done. I do not want to email anything. I did let you and Chris [Katopis, PTO Congressional Liaison] know what I said." Sims Decl. Ex. A, at FOIA 0139.

- At least one, and probably two, meetings that Mr. Dudas took with Bacardi's top executive, the first on February 25, 2002, and the second scheduled for September 3, 2002 (*Id.* at FOIA 0044, 0132);
- An additional follow-up call by Mr. Dudas "about the case" in early March 2002, in which he discussed with Governor Bush's Washington aides the expected PTO "action, which from all indications will be favorable" (*Id.* at FOIA 0044);
- A March 18 contact between Bacardi and Governor Bush's Washington D.C. representatives, asking them to contact Deputy Director Dudas to insulate the summary judgment motion now pending from "any undue negative 'influence' from certain parties [in the PTO, thought to be not on Bacardi's side] knonw [sic.] to us" (*Id.* at FOIA 0045);
- Additional phone conversations between the Governor's representatives and Mr. Dudas, including one on March 19 relaying information that had obtained from Bacardi's chief in-house lobbyist the day before concerning Bacardi's motion, and offering to "help . . . in any way" (*Id.* at FOIA 0069);
- Receipt by Mr. Dudas on March 21, 2002, of a communication squarely on the merits of the motion from Jorge Rodriguez, Bacardi's Vice-Director of Corporate Communications– which Mr. Rodriguez sent on March 20, 2002 to Travis Thomas, Director of the Commerce Department's Office of Business Liaison, and which Mr. Thomas forwarded the next day to Mr. Dudas with a "check this out – just talked to Jorge" message[5] (*Id.* at FOIA 0145); and
- Apparently, Mr. Dudas's personal deletion of a reference to Governor Bush's demand for cancellation that appeared in an early draft of Director Rogan's response letter, so as to disguise the Governor's demand for help as a "status inquiry" (*See id.* at FOIA 0142; *compare* FOIA 0144 *with* 0002).

For further details of significant *ex parte* contacts and events, see Sims Decl. Ex. B.

Thanks to this "continued assistance" by Deputy Director Dudas at the request of Bacardi (and the Governor), Bacardi filed its motion having been informed that "all indications [were] favorable." Sims Decl. Ex. A, at FOIA 0044. Further, Bacardi learned something (still unknown to respondent) from PTO insiders that persuaded it that its motion would "be dealt with

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[5] Mr. Rodriguez' slur on Eleanor Meltzer (Sims Decl. Ex. A, at FOIA 0146) – he said that she was ready to "pass judgment on two scenarios in which she has no knowledge" – is demonstrably incorrect. Ms. Meltzer was merely making a correct statement of the law. *See In re Bacardi & Co.*, 48 USPQ2d 1031 (TTAB 1997).

expeditiously and without any undue negative influence from parties who may not agree with Bacardi's rights under the law." *Id.* at FOIA 0146.

In short, the factual conclusion evident from the previously submitted documents – that further *ex parte* communications existed and made plain a grave risk of unfairness in this proceeding – is strongly substantiated by the subsequently acquired documents.

Secret communications between interested parties and an administrative decision-maker are inconsistent "with fundamental notions of fairness implicit in due process and with the ideal of reasoned decisionmaking on the merits which undergirds all of our administrative law." *Home Box Office v. FCC*, 567 F.2d 9, 56 (D.C. Cir. 1977). Based on the record, and on existing case law, the Board's denial of Respondent's motion was erroneous.

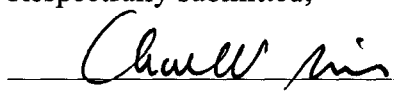
CONCLUSION

The Government in the Sunshine Act was enacted to ensure basic fairness in adjudicated proceedings. That basic fairness entails, above all else, a fair, impartial decision-maker, committed to reaching decisions according to law. The documents made available on the Motion – and the additional, confirmatory documents now obtained from third parties under freedom of information laws – cast considerable doubt on the fairness of this proceeding so far, and on whether a fair result can be, and can be seen to have been, obtained.

Respondent's motion for reconsideration should therefore be granted. The TTAB should either dismiss Bacardi's proceeding with prejudice, based on Bacardi's *ex parte* communications and concerted effort to obtain a political, not a fairly adjudicated result; or, at a minimum, the Board should direct full disclosure, including document disclosure, depositions, and if necessary an evidentiary hearing, to expose the full extent of the *ex parte* communications between Bacardi and those acting for it, on the one hand, and Director Rogan, Deputy Director Dudas, and their

staffs or any other TTAB personnel, on the other, concerning Bacardi's effort to obtain cancellation of the HAVANA CLUB registration.

Respectfully submitted,



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Attorneys for Respondent Havana Club Holding S.A.

Dated: February 19, 2003

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 19, 2003, true and correct copies of the foregoing

MOTION OF RESPONDENT HAVANA CLUB HOLDING FOR RECONSIDERATION OF THE BOARD'S DECISION DATED JANUARY 21, 2003,

and the accompanying

DECLARATION OF CHARLES SIMS dated February 18, 2003, and exhibits thereto,

were served via U.S. EXPRESS MAIL on:

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Charles Sims

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"Express Mail" mailing label number EH628983084US.

I hereby certify that this correspondence, namely:

MOTION OF RESPONDENT HAVANA CLUB HOLDING FOR RECONSIDERATION OF THE BOARD'S DECISION DATED JANUARY 21, 2003

along with the accompanying Declaration of Charles Sims and the exhibits thereto, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia, 22202-3515,

on February 19, 2003.

Charles Sims

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February 19, 2003

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Re: Cancellation No. 24,108:
Galleon, S.A, Bacardi-Martini U.S.A., Inc. and Bacardi & Co., Ltd. v. Havana Club Holding, S.A. and Empresa Cubana Exportador De Alimentos Y Productos Varios, S.A., d.b.a. Cubaexport

To Whom It May Concern:

Enclosed for filing in the above proceeding please find the MOTION OF RESPONDENT HAVANA CLUB HOLDING FOR RECONSIDERATION OF THE BOARD'S DECISION DATED JANUARY 21, 2003, along with the supporting DECLARATION OF CHARLES SIMS and exhibits thereto.

Yours truly,

Charles S. Sims

cc: William R. Golden, Jr., Esq.
Michael Krinsky, Esq.
Vincent N. Palladino, Esq.